



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Downtown Auto Sales

Case No.: TR-99-0048

FINAL DECISION

On November 22, 1999, Kim Larsen, d/b/a Northside Auto Sales, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Downtown Auto Sales. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated February 8, 2000, the Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The parties were given until February 21, 2000, to file any additional documents or information that they wished to have the ALJ consider in issuing the preliminary determination. The Dealer filed a letter and additional documents objecting to the claim on February 21, 2000. The Administrative Law Judge issued a Preliminary Determination on April 6, 2000. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Kim Larsen, d/b/a Northside Auto Sales
1781 41st Avenue
Willmar, MN 56201

James Westpfahl, d/b/a Downtown Auto Sales
112 East Saratoga Street
Tomah, WI 54660

Capitol Indemnity Corporation
P. O. Box 5900
Madison, WI 53705-0900

FINDINGS OF FACT

1. Downtown Auto Sales (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The Dealer's facilities are located at 112 East Saratoga Street, Tomah, Wisconsin.

2. The Dealer has had a surety bond in place from August 18, 1994, to the present. (Bond #LP584148 from Capitol Indemnity Corporation, Madison, Wisconsin.)

3. On November 22, 1999, Kim Larsen, d/b/a Northside Auto Sales, filed a claim against the Dealer's motor vehicle bond. In the bond claim, Mr. Larsen alleges that on November 21, 1998, he executed a check in the amount of \$16,800.00 to Downtown Auto Sales to purchase two 1997 Dodge $\frac{3}{4}$ ton trucks. Northside Auto Sales never received the 1997 Dodge trucks; however, on January 30, 1999, the Dealer delivered a damaged 1994 Ford Explorer to Northside Auto Sales. Kim Larsen deducted \$4,000.00 for the Ford Explorer from the \$16,800.00 he paid to the Dealer and calculated that the Dealer owed him \$12,800.00.

On February 23, 1999, Gordon Alexander executed a check in the amount of \$12,800.00 to Northside Auto Sales. The check was written on an account identified as "Downtown Auto Sales—Gordy Alexander" at the Tomah Area Credit Union. The Tomah Area Credit Union initially refused to honor the check because of non-sufficient funds. Mr. Larsen redeposited the check but the second time the check was presented for payment it was not honored because Mr. Alexander had stopped payment on it.

As support for his claim Mr. Larsen submitted a copy of a check dated November 21, 1998, in the amount of \$16,800.00 indicating in the memo that it is for two 1997 Dodge $\frac{3}{4}$ [ton trucks]. The check is payable to "Stateline." Mr. Larsen also submitted a copy of a check dated November 22, 1991, payable to Downtown Auto Sales in the amount of \$6,500.00 and, according to the memo portion of the check, it was issued for the purchase of a 1998 Ranger. Mr. Larsen also submitted copies of three vehicle purchase contracts for vehicles purchased from Downtown Auto Sales. None of the purchase contracts relate to the two 1997 Dodge $\frac{3}{4}$ ton trucks.

4. In his letter filed on February 21, 2000, Mr. Westpfahl alleges that he had no knowledge of the transaction involving the 1997 Dodge $\frac{3}{4}$ ton trucks and that the check Gordon Alexander executed on February 23, 1999, was written on an account that he "had nothing to do with." Mr. Westpfahl further alleges that the Department of Transportation "picked up" Gordon Alexander's salesman and buyers licenses in January 1999.

5. Northside Auto Sales is apparently a Minnesota motor vehicle dealer. The purchase of the two 1997 Dodge $\frac{3}{4}$ ton trucks was a wholesale transaction between dealers. The bond claim procedure described in Chapter Trans 140, Wis. Adm. Code, is not intended to apply to transactions between dealers. Pursuant to sec. Trans 140.21(2)(a), Wis. Adm. Code, claims by claimants licensed or required to be licensed under Ch. 218, Stats., are to be disallowed.

As a Minnesota dealer, Northside Auto Sales apparently is not licensed under Ch. 218, Stats., and; therefore, its claim is not expressly disallowed. Regardless, even if it is determined

that Northside Auto Sales' claim is not disallowed, Mr. Larsen has not submitted sufficient documentation for his claim. He has not submitted a purchase contract for the purchase of the two 1997 Dodge ¾ ton trucks and the check which apparently was executed for the purchase of the trucks is payable to "Stateline" not Downtown Auto Sales. The bond claim filed by Northside Auto Sales against the surety bond of Downtown Auto Sales must be denied.

CONCLUSIONS OF LAW

1. Kim Larsen's claim arose on February 23, 1999, the date Gordon Alexander wrote a non-sufficient funds check to Northside Auto Sales. The surety bond issued to Downtown Auto Sales by Capitol Indemnity Corporation covers a one-year period commencing on August 18, 1998. The claim arose during the period covered by the surety bond.

2. Kim Larsen filed a claim against the motor vehicle dealer bond of Downtown Auto Sales on November 22, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Kim Larsen's loss was not caused by an act of Downtown Auto Sales, which would be grounds for the suspension or revocation of its motor vehicle dealer license; therefore, pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, the claim is not allowable. Furthermore, even if Kim Larsen's loss was caused by an act that would be grounds for suspension or revocation of Downtown Auto Sales' motor vehicle dealer license, Kim Larsen has not provided sufficient documentation to support his claim.

4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by Kim Larsen, d/b/a Northside Auto Sales, against the motor vehicle dealer bond of Downtown Auto Sales is DENIED.

Dated at Madison, Wisconsin on May 9, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By: _____
Mark J. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.